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REGISTERED PATENT ATTORNEY

January 12, 2007

MAIL STOP APPEAL BRIEF-PATENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: United States Patent Application  
Serial No.: 10/060,027  
Title: Business Method for Memorializing Vehicle Purchase Transactions  
Our Reference No.: 30457.36

Dear Sirs:

Enclosed for filing are the following documents:

1. Amended Appeal Brief (in triplicate) (36 sheets each); and
2. Acknowledgment Post Card.

The Commissioner is hereby authorized to charge any deficiency in fees or credit any overpayment to Deposit Account No. 03-3483.

Respectfully submitted,

*Court B. Allen*

Courtenay B. Allen  
Reg. No. 43,469

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF:  
**Gerald Lacour, Garrett Lacour, Robert  
Corbin, and Matt Nowicki**  
SERIAL NO. **10/060,027**

ATTORNEY DKT. NO. **30457.36**

GROUP ART UNIT: **3627**

FILED: **January 28, 2002**

EXAMINING ATTORNEY: **Michael Cuff**

**TITLE: BUSINESS METHOD FOR  
MEMORIALIZING VEHICLE  
PURCHASE TRANSACTIONS**

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**AMENDED APPEAL BRIEF**

This Amended Appeal Brief is an amended version of the Appeal Brief filed November 7, 2006, which is being filed in response to and within one month of the Office Action dated December 13, 2006. Applicant respectfully requests review of this Amended Appeal Brief.

**REAL PARTY IN INTEREST**

The Real Party in Interest of the present application is Innovative Aftermarket Systems, L.P., a Texas limited partnership, having its principle office at 12800 Angel Side Drive, Leander, Texas, 78641. The inventors named in this Application, Gerald Lacour, Garrett Lacour, Robert Corbin, and Matt Nowicky, are each employees of Innovative Aftermarket Systems, L.P., and have assigned their respective rights, title, and interest in this application to Innovative Aftermarket Systems, L.P.

## **RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## **STATUS OF CLAIMS**

The present application contains ten (10) claims. Claims 1 – 6 have been canceled. Claims 7 – 10 stand rejected. Claim 7 is independent. Claims 8 – 9 depend from Claim 7. Claim 10 depends from Claim 8. The rejection of each of Claims 7 – 10 is appealed. A copy of the claims involved in the appeal is in the attached Claims Appendix.

## **STATUS OF AMENDMENTS**

No amendments were filed subsequent to final rejection.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 7 is directed to a novel business method for documenting vehicle purchase transactions involving a vehicle dealership representative and a consumer. The business method involves "creating a digital, audio-visual record of communications between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction; creating a computer-searchable identifier of said digital, audio-visual record; and storing said digital, audio-visual record of said computer-searchable identifier in a computer database." *See* Response to Final Office Action dated March 29, 2006, "Claim Amendments," p. 7. In preparation for practicing the claimed method, a digital video camera may be installed on a wall or other suitable location in the financial closing office(s) of a vehicle dealership, where the camera can record the images of the vehicle dealership representative and the consumer. The camera may be connected, either directly or through a wireless connection, to a personal computer. An audio

microphone may also be connected to the personal computer and may be located in an area on the closing desk where it can record the voices of the vehicle dealership representative and the consumer. (Application, p. 7, l. 4-12). The digital images and audio stream, respectively, from the video camera and the microphone may be recorded and stored into appropriate data files as the transaction goes on, thereby creating a digital, audio-visual record of communication between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction. (Application, Page 8, l. 6-9). A computer searchable identifier, such as, for example, the customer's name, address, vehicle purchased, time, date, etc., may be entered for cataloging the digital, audio-visual record. (Application, p. 7, l. 22 – p.8, l. 3). The digital audio-visual record and the computer-searchable identifier may be saved to a searchable computer database which may be on indelible media. (Application, p. 8, l. 13 – p.9, l. 10).

The claimed business method allows the database to be searched such that previously recorded digital, audio-visual records can be readily located and subsequently replayed. For example, one can search for all transactions on a particular date, by a certain sales staff member, involving a particular customer, or involving a particular vehicle or product, and easily retrieve these stored transactions. (Application, p. 8, l. 23 – p. 9, l. 10).

Thus, the subject business method allows for a permanent record of what happened during the actual closing of a vehicle purchase transaction, supplementing the actual signed paperwork. This permanent record can be used in the event any discrepancies or disputes arise in the future regarding the transaction, thereby protecting all parties to the transaction. (Application, p. 9, l. 15-20). Additionally, managers can monitor all transactions or spot check transactions to ensure employee compliance with fair business tactics, local, state, or federal laws, and to further train sales associates in proper sales strategy. (Application, p. 10, l. 2-7).

## GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 7 – 10 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over **Haber et al.** (U.S. 5,136,646) in view of **Eldridge** (Eldridge, Earle, “More car dealers now videotape sales,” USA Today, v. 19, n. 204, p. 1B(1), July 3, 2001).

Copies of **Haber et al.** and **Eldridge** are attached hereto in the enclosed Evidence Appendix.

## ARGUMENT

### I. **Claim 7 Is Not Obvious In View of Haber et al. and Eldridge**

The Examiner has stated that claim 7 is unpatentable over **Haber et al.** in view of **Eldridge**. Specifically, the Examiner has stated that **Haber et al.** teaches all aspects of claim 7 except “for specifying that the communications between a vehicle dealership representative and a consumer would be the object of the audio-visual record.” Final Office Action at 2. The Examiner argued the **Eldridge** news article teaches “the growing practice by car dealers of videotaping the sales transactions \* \* \* to protect customers from their finance and insurance staff.” Final Office Action at 3. Contrary to the Examiner’s contentions, neither **Haber et al.** nor **Eldridge**, alone or in combination, teaches, discloses, or suggests the novel business method recited in claim 7. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness.

#### A. **Summary of Haber et al.**

**Haber et al.** discloses a method of sequentially time-stamping a series of digital documents with a cryptographic catenation procedure such that subsequent efforts to change the content of the digital documents or manipulate the time stamps will be apparent. *See Haber et al.*, col. 2, l. 50-64; col. 4, l. 22-40. The disclosed method involves an outside time-stamping

agency (TSA), which time stamps a submitted document “to create a receipt by adding digital data signifying the [time of submission], concatenates the receipt with the current cryptographic catenation of its prior time stamp receipts, and creates a new catenation from the composite document by means of a deterministic function \* \* \*.” *Id.* at col. 3, lines 9-22. The outside TSA described in **Haber et al.** “relies upon the relatively continuous flow of documents from the universe of authors through the facilities of the TSA” in maintaining a catenated chain of time stamp receipts, wherein each link in the chain depends on the series of receipts preceding it. *Id.* at col. 4, lines 41-55. “Thus, each of the time-stamped catenate certificates issued by the TSA is fixed in the continuum of time and none can be falsely prepared by the TSA, since any attempt to regenerate a catenate certificate number \* \* \* would reveal the discrepancy.” *Id.* at col. 4, lines 63-68. The **Haber et al.** method “transfers control of the time-stamping step from the author to an independent agent and removes from the author the ability to influence the agent in the application of other than a truthful time stamp.” *Id.* at col. 2, l. 64-68.

#### **B. Summary of *Eldridge***

**Eldridge** is a news article that focuses primarily on the various privacy issues arising from the videotaping of customers, and no specific methodology or implementation is expressly described. The article refers to a vehicle dealer management firm, namely, Auto Gap of Madisonville, La., which “began selling a video camera setup 3 years ago,” **Eldridge** at ¶ 9-10, which apparently was used to record vehicle sales transactions on videotape. In discussing the relative merits of such surveillance systems, the article states that “[d]ealers say tapes have helped customers as well as themselves.” *Id.* at ¶ 14.

### C. Distinguishing Haber et al. and Eldridge from Claim 7

The Examiner contends that **Haber et al.** “shows a system for time-stamping a digital document, for example any alphanumeric, video, audio \* \* \* or pictorial data,” wherein the “representation is transmitted to an outside agency (storage database)” and “[t]he content of a document and a time stamp of its existence are ‘indelibly’ incorporated into the digital data of the document,” such that “[i]f further proof were demanded upon adversary allegation, the document or video could be retrieved \* \* \* to establish the date on which a document was created and to prove that the text of a document in question is in fact the same as that of the original dated document.” Final Office Action at 2. The Examiner contends that **Haber et al.** teaches all aspects of claim 7 “except for specifying that the communications between a vehicle dealership representative and a consumer would be the object of the audio-visual record.” *Id.* The Examiner cited **Eldridge** for the practice of videotaping sales transactions by car dealers. *Id.* at 3. The Examiner concludes claim 7 would have been obvious based on **Haber et al.** in view of **Eldridge**. However, as set forth in detail below, neither **Haber et al.** nor **Eldridge**, alone or in combination, teaches, discloses, or suggests the method of claim 7.

#### *1. Creating a digital, audio-visual record of communications between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction*

Neither **Haber et al.** nor **Eldridge** discloses or suggests creating a digital, audio-visual record of communications between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction. Although **Haber et al.** discloses that a digital document “may broadly comprise any alphanumeric, audio, or pictorial presentation,” *see Haber et al.* at col. 3, l. 12-13, **Haber et al.** does not disclose or suggest a digital audio-visual record,

much less such a record of communications between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction. In fact, **Haber et al.** appears to be focused on digital documents composed of textual strings and characters, *see Haber et al.* at col. 6, l. 1-10, which is the only example given, so it is not at all clear whether the method of time-stamping disclosed in **Haber et al.** would be applicable to a digital audio-visual record, even if such a record were disclosed. Further, **Eldridge** does not supply this teaching, which is missing from **Haber et al.**, because **Eldridge** merely discloses videotaping on tapes; **Eldridge** does not disclose any details about what type of recording (whether digital or otherwise) was made.

2. *Creating a computer-searchable identifier of said digital, audio-visual record*

Neither **Haber et al.** nor **Eldridge** discloses or suggests creating a computer-searchable identifier of a digital, audio-visual record. As discussed previously, **Haber et al.** merely discloses a method of authenticating the date on which a particular document is transmitted to a third-party, namely an “outside time-stamping agency (TSA),” by creating a catenate value. “The resulting catenate value is then included with time and other identifying data in a document, now a certificate of the temporal existence of the original document, which is transmitted back to the author where it will be held for later use in any required proof of such existence.” **Haber et al.** at col. 3, lines 21-27. In other words, the author of the media at issue in **Haber et al.** receives a singular, encrypted certificate or receipt for each document submitted to the TSA. **Haber et al.** does not teach or suggest that such certificates are searchable by computer.

Moreover, **Eldridge** does not supply this missing teaching or suggestion. **Eldridge** does not disclose or suggest use of a computer at all, much less creating a computer-searchable

identifier of a digital, audio-visual record. Therefore, there is no teaching or suggestion to combine **Eldridge** with **Haber et al.**

**3. *Storing said digital, audio-visual record and said computer-searchable identifier in a computer database***

Neither **Haber et al.** nor **Eldridge** discloses or suggests storing said digital, audio-visual record and said computer-searchable identifier in a computer database. The third-party TSA described in **Haber et al.** apparently does not retain a copy of the submitted digital document, but merely maintains a record of catenated certificates or receipts. *See Haber et al.* at col. 4, l. 22-29. In fact, the TSA may not even receive the full document, but a reduced file generated by a hash function. *See id.* at col. 3, l. 28-36. The TSA is able to authenticate documents precisely because of its independent status as an uninterested clearinghouse for document authentication, and “[t]he process of the invention relies upon the relatively continuous flow of documents from the universe of authors through the facilities of the TSA.” **Haber et al.** at col. 4, lines 41-43. The catenated certificates or receipts comprise an alphanumeric representation of the submitted digital document, as well as portions of previously submitted documents. “[A]ny change in the original document content, even to the extent of a single word or a single bit of digital data, results in a different document that would hash to a completely different fingerprint value.” *Id.* at col. 3, lines 59-62. “Although a document cannot be recovered from its representative hash value, a purported original document can nonetheless be proven in the [**Haber et al.**] timestamping procedure by the fact that a receipt concatenation comprising a true copy of the original document representation will always hash to the same catenate value as is contained in the author’s certificate, assuming use of the original hashing algorithm.” *Id.* at col. 3, line 62 – col. 4, line 2. Therefore, the authentication method disclosed in **Haber et al.** does not require that the

TSA store the actual digital documents themselves, and **Haber et al.** does not disclose or suggest such storing, much less storing of a computer-searchable identifier of a digital, audio-visual record. When the issue of authentication arises, parties in possession of the purportedly original documents need only compare the catenate values of the documents in controversy to the catenated receipts of the originally submitted documents. As such, **Haber et al.** does not teach or fairly suggest storing said digital, audio-visual record and said computer-searchable identifier in a computer database.

Furthermore, **Eldridge** does not supply any teaching or suggestion in this regard. **Eldridge** makes no mention of a digital, audio-visual record or a computer-searchable identifier of such digital, audio-visual record, much less storing the same in a computer database. Therefore, there is no suggestion to combine **Eldridge** and **Haber et al.** as argued by the Examiner.

## II. **Claim 8 Is Not Obvious In View of Haber et al. and Eldridge.**

Neither **Haber et al.** nor **Eldridge** discloses recording a digital audio-visual record and a computer-searchable identifier onto substantially indelible recording media as recited in claim 8. The Examiner argues that **Haber et al.** teaches the use of substantially indelible media by disclosing that “the content of a document and a time stamp of its existence are ‘indelibly’ incorporated into the digital data of the document \* \* \*.” **Haber et al.** at col. 2, line 54-57. However, further disclosure in **Haber et al.** makes clear that this so-called “indelible incorporation” refers to the encryption process itself, whereby “it is not possible to change any bit of the resulting time-stamped data *without such a change being apparent.*” *Id.* at col. 2, line 57-59 (emphasis added). This “indelible incorporation” does not refer, as in Appellant’s application, to the storage of audio-visual data on indelible media “such as CD-R, DVD-R, or DVD-RAM

disks, with the DVD-R being of the highest capacity and most indelible format known to date.” Application, page 8, l. 15-18. And once again, **Eldridge** simply has no teaching or suggestion whatsoever in this regard. Therefore, claim 8 is not obvious in view of **Haber et al.** and **Eldridge**.

### **III. Claims 9 and 10 Are Not Obvious in View of Haber et al. and Eldridge.**

Neither **Haber et al.** nor **Eldridge** discloses or suggests searching for and retrieving said digital, audio-visual record using said computer-searchable identifier, and playing said digital, audio-visual record to confirm the contents. As discussed previously, **Haber et al.** does not teach or fairly suggest a database for storing audio-visual records and computer-searchable identifiers, much less searching for and retrieving audio-visual records using such computer-searchable identifiers and playing the audio-visual record to confirm the contents. Indeed, **Haber et al.** teaches away from the subsequent search and retrieval of audio-visual records by stating that “a document cannot be recovered from its representative hash value \* \* \*.” **Haber et al.** at col. 3, line 62-63. Even assuming, *arguendo*, that practitioners of the **Haber et al.** method were able to search an actual database using their catenate certificates, they would be unable to reconstitute, i.e., retrieve and play back, the original recording using the TSA’s records. Verification of contents of digital documents as disclosed in **Haber et al.** is accomplished through comparison of catenate certificate values, not playing a digital audio-visual record. And one again, **Eldridge** does not supply this missing teaching or suggestion.

### **IV. No Motivation to Combine**

Furthermore, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the **Haber et al.** and **Eldridge** references or in the knowledge of a person of ordinary skill in the art, to modify the references to arrive at the Applicant’s

claimed invention. *See, e.g., In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q. 2d 1397, 1398 (Fed. Cir. 1989) (“Although the Commissioner suggests that [the structure in the primary reference] could readily be modified to form the [claimed] structure, ‘[t]he mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.’ ”); *see also In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991) (PTO erred in rejecting patent claims as *prima facie* obvious since the prior art did not suggest the combination or convey to those of ordinary skill in the art a reasonable expectation of success). The burden rests on the Examiner to prove the desirability of such a modification. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). The Examiner simply has not carried that burden.

A simple finding of somewhat similar individual elements in the references and the claimed invention is not sufficient to a determination of obviousness. There is a rigorous requirement for “a showing or a teaching or motivation to combine the prior art references” in order to avoid improper hindsight analysis in search of obviousness. *See In re Dembicza*k, 175 F.3d 994, 999, 50 U.S.P.Q. 2d 1614, 1617 (Fed. Cir. 1999). As noted by the court in *Dembicza*k, “broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence.” *Id.* It is impermissible to use “hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q. 2d 1780, 1783 (Fed. Cir. 1988).

Moreover, a “rejection cannot be predicated on the mere identification \* \* \* of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” *In re Werner Ketzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000). Therefore, the cited references must be analyzed for such a teaching or motivation to combine, and not simply a hindsight mosaic of claimed ingredients. Appellant has demonstrated that the collection of references cited by the Examiner is nothing more than a hindsight mosaic of claimed ingredients and, in fact, quite a bit less.

The Examiner has provided no reason why a person of ordinary skill in the art at the time of Applicant’s invention should desire to modify **Haber et al.**, or combine **Haber et al.** with **Eldridge**, to arrive at Applicant’s invention. Therefore, Applicant respectfully submits that the Examiner has not met the burden and urges withdrawal of the Examiner’s § 103 rejection.

#### **V. Objective Evidence of Nonobviousness**

Lastly, even if the Examiner had presented a *prima facie* case of obviousness, Applicant has presented compelling objective evidence of nonobviousness to overcome such rejection. Specifically, the **Shim** industry trade publication (Shim, Joan, “Lights, Camera, Disclosure!” F&I Management & Technology, May/June 2004), a copy of which is included in the attached Evidence Appendix, indicates that Applicant’s claimed invention has solved a long felt but heretofore unsolved need, has achieved surprising results, and has achieved wide industry acclaim and commercial success. *See Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). First, regarding unmet need, Appellant notes that according to **Shim**, “[d]ealers who started taping several years [prior to May/June 2004] used bulky cameras and VHS tapes.” *See Shim* at

p. 7. Clearly, that awkward and ungainly system was not conducive to the consistent and convenient recording, retrieval, and playback of automotive sales transactions. The author of the article goes on to note that the Appellant's "SmartEye system lets dealers record only customer transactions \* \* \* [which] are stored in a searchable database and can be pulled up using time, customer name, or type of transaction." *Id.* at 7-8. Appellant's method has satisfied car dealers' need for a better recording system.

Under the heading "RECORDING PAYS OFF," **Shim** goes on to describe the benefits experienced by various car dealerships in adopting the Appellant's technology. *See id.* at 5-6. The article notes that "[b]ecause the system holds F&I managers to soliciting all customers all the time, Hall Automotive's service-contract penetration rose from 50 percent to about 62 percent. GAP rose from 27 percent to 42 percent, and car care climbed from about 28 percent to 35 percent." *Id.* at 5. Another customer, the Roger Beasley Mazda dealerships, "have seen similar gains. 'Before I had cameras I was running around \$575 a copy,' says [Roger Beasley's Manager] Bagan. 'Since the cameras we're at \$850 a copy. I went from a 34 percent warranty penetration to 58 percent. I've had about a 10 to 12 percent bump across the board on all my products due to the simple fact that everybody gets presented everything every time.' " *Id.* at 5-6. In remarking on these surprising results, the article posits that "[a]lthough other factors may have influenced these increases, it's indisputable that being taped has motivated finance managers to be thorough, consistent and conscientious." *Id.* at 6. In other words, there is a direct and surprising link between use of the Appellant's technology and an increase in sales.

Apart from the positive tone struck by the F&I trade publication (**Shim**) in reference to Appellant's claimed technology, the article goes on to note that "at least 600 to 700" car dealerships nationwide have adopted Appellant's system. *Id.* This remarkable level of industry

adoption, combined with laudatory comments found throughout the F&I trade publication, indicates that the technology covered by the subject claims enjoys widespread commercial success and industry acclaim. Indeed, despite the availability of recording equipment, the unwieldy nature of video tapes, as well as a lack of practicable storage and retrieval methods or systems, heretofore provided sufficient disincentive for dealerships wishing to record and monitor sales events. The Appellant's technology overcame those limitations and provided a business method having increased utility and surprising results now enjoyed by those customers using the present method. The methods of the present application are now widely adopted in the industry precisely because of the differences from any known prior art; that is, the claimed methods not only work, but they work so well and with such surprising results that they have garnered widespread industry acclaim. Consequently, the claimed methods are not obvious in view of **Haber et al.** and **Eldridge**. *See Graham*, 383 U.S. at 17-18.

For the foregoing reasons, Appellant believes that the Examiner's rejections of Claims 7 – 10 were erroneous, and reversal of his decision and allowance of those claims are respectfully requested.

Respectfully submitted,

COX SMITH MATTHEWS INCORPORATED

Date: Jan. 12, 2007

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## CLAIMS APPENDIX

### CLAIMS INVOLVED IN THE APPEAL

7. A business method for documenting vehicle purchase transactions comprising the steps of:

creating a digital, audio-visual record of communications between a vehicle dealership representative and a consumer during all or part of a vehicle purchase transaction; creating a computer-searchable identifier of said digital, audio-visual record; and storing said digital, audio-visual record and said computer-searchable identifier in a computer database.

8. The business method of Claim 7 further comprising the step of recording said digital, audio-visual record and said computer-searchable identifier onto substantially indelible recording media.

9. The business method of Claim 7 further comprising the step of, at a time subsequent to said vehicle purchase transaction, searching for and retrieving said digital, audio-visual record using said computer-searchable identifier, and playing said digital, audio-visual record to confirm the contents of communications between said vehicle dealership representative and said consumer during said vehicle purchase transaction.

10. The business method of Claim 8 further comprising the step of, at a time subsequent to said vehicle purchase transaction, searching for and retrieving said digital, audio-visual record using said computer-searchable identifier, and playing said digital, audio-visual record to confirm the contents of communications between said vehicle dealership representative and said consumer during said vehicle purchase transaction.

## **EVIDENCE APPENDIX**

Attached hereto are the following evidence documents along with a statement setting forth where in the record such evidence was entered in the record by the examiner or the applicant:

1. U.S. Pat. No. 5,136,646 (Haber et al.); cited by the examiner in the Office Action dated 06/07/2006 at p. 2.
2. Eldridge, Earle, "More car dealers now videotape sales," USA Today, v. 19, n. 204, p. 1B(1), July 3, 2001 (Eldridge); cited by the examiner in the Office Action dated 06/07/2006 at p. 2.
3. Shim, Joan, "Lights, Camera, Disclosure!" F&I Management & Technology, May/June 2004 (Shim); submitted by applicant with Response to Office Action filed 03/29/2006 at p. 3 (see reference to "accompanying trade journal article") (online version submitted herewith for better clarity).



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07/03/2001 - Updated 08:40 AM ET

### More car dealers now videotape sales

By Earle Eldridge, USA TODAY

The next time you sign the paperwork to buy a new car, the dealer may be videotaping you, a move that alarms privacy advocates.

Dealers say there's no need to worry, that they are taping the final sales transactions simply to:

- Prevent their finance and insurance staff — the people who generally handle document signing — from overselling extras or misleading customers.
- Make sure customers fully understand what they are buying.
- Make sure all extras are offered to every customer.
- Handle claims that customers were mistreated or lied to.

"I wanted to be sure that we were properly disclosing the transaction that took place in that office," says Bob Giles, a Nissan dealer in Lafayette, La.

But some privacy advocates question the practice. Marc Rotenberg, president of the Electronic Privacy Information Center in Washington, says more businesses are installing cameras to monitor staff and customers, but that "pushes the envelope of acceptable business practices."

Michael Howell, president of Auto Gap, a Madisonville, La., dealer management firm, began selling a video camera setup 3 years ago. He has 50 dealers in 18 states signed up. Dealers who use Auto Gap's extended warranty program get the cameras as part of the deal.

The dealers post a sign telling the customer that the transaction will be videotaped for security and training purposes. Howell tells them to turn off the camera if a customer complains.

Rotenberg says consumers should have a right to say they don't want to be videotaped and that the signs should be posted prominently.

One privacy concern: that dealers may spy on customers as they debate the merits of the deal when the finance person steps away. "People ought to be able to have a conversation out of earshot of the microphones," says Barry Steinhardt, associate director of the American Civil Liberties Union.

Dealers say they don't monitor sales as they occur and don't coach staff in the middle of a transaction.

Dealers say tapes have helped customers as well as themselves.

Allen Krake, a Ford dealer in Metairie, La., says he bought back a \$35,000 Ford Expedition because the customer thought he was buying, not leasing, and the videotape backed the customer.

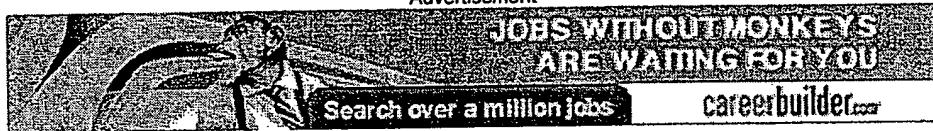
Some dealers want to make sure finance staff aren't selling customers monthly payments before disclosing that the price includes extras like an extended warranty and life insurance.

"People get lazy and instead of selling the (extra) product on its merits, they sign the buyer and include it in the payments. That's not right," Krake says.

But Jack Fitzgerald, a Washington-area dealer, called the cameras outrageous. "I think it's terrible. They are monitoring their finance people to make sure they don't lie to you. They shouldn't have that person on the staff."

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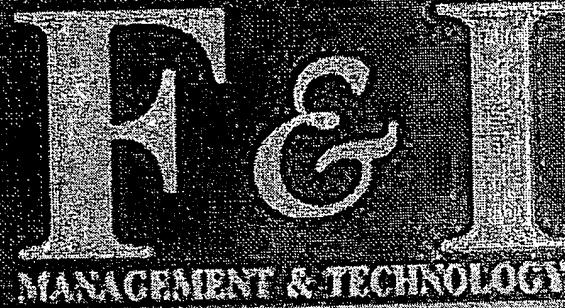
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*Taping F&I managers in action has helped dealers bring in hundreds of dollars more per car -- and saved them tens of thousands in legal fees.*

Hall Automotive Group in Virginia Beach, Va., started recording F&I transactions last year to keep legal problems at bay. Since then, recording has had other unforeseen benefits.

"I've actually used footage to help the police catch a felon who stole someone else's identity," says Fred Miller, executive vice president of Hall Automotive.

The customer walked into a Hall dealership attempting to buy a car with the stolen identity. He made it past the salesperson but was foiled in the F&I office. Right when the customer walked in, the finance manager explained -- on camera -- the dealership policy of recording transactions. The customer adamantly refused to be recorded and left.

The finance manager suspected something was wrong and called the police. The police came in, reviewed the recording and identified the customer as a wanted felon suspected of running a car theft operation. Using the footage, the police arrested the man shortly after.

Although most dealers aren't regularly fighting crime with cameras, they've found that recording transactions benefits their business from several angles. Cameras in the F&I office have proven

instrumental for legal protection, training and to ensure proper disclosure.

#### **Just for the Record**

After seeing the steady stream of press about state attorney general offices investigating F&I practices, the executives at the Roger Beasley Auto Group decided to start recording.

"I felt it was the best way to ensure that the integrity we expected of our people was being upheld," says Jim Bagan, executive vice president for the Roger Beasley Group, based in Austin, Texas. "The real hook was the liability protection the cameras provided against misrepresentation of my people, the dealership or the consumer."

Bagan oversees F&I for the four Roger Beasley Mazda stores in the Austin area. Since installing the cameras, he recalls five times when a customer or attorney tried to accuse the dealership of some misbehavior. Each time, he offered to meet with them to review the recordings and the complaint went away.

Red McCombs Automotive Group initially started taping for training purposes. "I quickly observed that recordings had value to be able to refresh a customer's memory about what actually transpired during the closing," says Herman Ford, chief operating officer of McCombs Automotive. The Texas-based dealer group started taping transactions on VHS about four years ago. It has since gone to digital recording (see the related sidebar).

Once a customer purchased a very expensive vehicle that happened to be out of the manufacturer's warranty, remembers Ford. The finance manager pleaded with the consumer to consider purchasing a service contract. The customer stubbornly refused.

"As luck would have it, within 30 days he had a major engine failure and wanted the dealership to handle it," says Ford. "He tried to say that he wasn't aware that there wouldn't be a warranty; he assumed everything came with at least a 90-day warranty."

Fortunately, the dealership had on tape the customer's refusal of the service contract and the finance manager telling him there would be no coverage. "I'm convinced that this would have resulted in some sort of filing against us had we not had strong evidence that he knew exactly what refusing coverage meant," says Ford.

One F&I manager finds that recording transactions ends the "he said, she said" that happens when a customer complains. "Now it isn't my word against the customer's word. It's there on camera," says Anthony Fortes, finance director at Saturn of Warwick (R.I.).

Cameras also enable dealer groups to deliver a consistent message across multiple stores.

"One dealer said installing cameras has 'McDonaldized' the F&I process," says Carl Farris, president of ADS Management Group. Virginia-based ADS works with about 350 dealerships on the East Coast.

The mere presence of cameras holds F&I staff instantly accountable for giving by-the-book presentations. "Finance managers are aware that they're being taped. That keeps them honest in following the process," says Jim Klimas, general manager at Herb Chambers Dodge in Danvers, Mass.

### **Customers on Camera**

One concern in monitoring the F&I box is the effect it might have on customers. Is it too intrusive? Will it make customers defensive? Will it affect the interaction and your chances of selling to them? Will they get up and leave?

Ford of the McCombs Group says customers are used to being recorded. "You're taped at banks, airports -- it's so common everywhere. I just think people view it as normal business," he says.

Customers are actually comforted and reassured by the cameras, says Bagan. Seven out of 10 customers at Roger Beasley Mazda will look at the camera and start waving when they're told the transaction is being recorded.

"Most customers walk into the box prepared for something ugly to happen. They've heard all the nightmarish stories," explains Bagan. But once they hear that the transaction is being recorded for their protection, their guards go down and their demeanors change. Bagan has seen this happen repeatedly while reviewing the tapes.

Miller of Hall Automotive says that after watching hundreds of videos, he has not once seen a customer looking uncomfortable or constantly looking at the camera. Customers seem to forget they're being taped once they hear it's for everyone's protection.

### **Watching Tape**

Athletes aren't the only ones who train by watching tape. Dealership management can review actual F&I transactions to identify coaching opportunities. Finance managers can watch themselves on tape to fine-tune their presentations and work on their tone, mannerisms and interpersonal skills.

"I equate it to improving your golf swing," says Dave Frisbie, president of Profit Portfolio, F&I partner of the Herb Chambers Group. "I had never seen my golf swing and, when I did, it was easier to correct problems with the swing."

Frisbie will review a snippet of a manager's footage if his or her numbers fall. He will also pull tapes of managers with exceptional performance so that others can learn from them.

Dealership management usually does not know how F&I people actually cover the contract because they do it behind closed doors, says Ford. At the McCombs Group, management reviewed recordings and discovered that some F&I people were rude and unfriendly. Many of them would rush through the presentation and finish too quickly. Ford says he was able to address these shortcomings.

At Roger Beasley Mazda, tapes revealed that one manager was pointing at and talking down to the customer. The manager saw himself on tape and corrected his behavior. He was selling more the very next day, says Bagan.

At Hall Automotive, management even uses the footage to better train salespeople in the skill of turnover. "It's a training tool for the salespeople because they are in the initial taping when the customer comes into the finance office," says Farris. "There's a procedure for a proper turnover to the finance office. That's recorded and they're able to critique it."

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## Lights, Camera, Disclosure!

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### F&I Managers on the Record

Many F&I managers initially aren't too happy with the idea of their transactions being recorded. "There was a lot of resistance from F&I managers in the beginning, as with most changes," says Ford.

But the majority have learned to accept the recording.

"Now it's just a part of doing business," says Jeff Davis, general manager at Herb Chambers Honda of Boston. "It took some time to reinforce it and let the managers understand that we weren't using it for punitive reasons."

Finance managers who are confident in the integrity of their presentations seem comfortable being recorded. "My top performers said they have nothing to hide. Others were skeptical," says Frisbie.

Saturn of Warwick's Fortes not only accepted that his transactions would be recorded, he welcomed it.

"It was a natural transition because if you know you're doing things right and you believe in full disclosure, there's nothing to worry about," he explains. "I didn't have a problem whatsoever."

### Recording Pays Off

Miller of Hall Automotive attributes per-vehicle retail increases of \$175 per car to a selling system that includes recording transactions. He uses the multimedia presentation and menu from Innovative Aftermarket Systems (IAS), along with the company's SmartEye NET system.

Because the system holds F&I managers to soliciting all customers all the time, Hall Automotive's service-contract penetration rose from 50 percent to about 62 percent. GAP rose from 27 percent to 42 percent, and car care climbed from about 28 percent to 35 percent.

The Roger Beasley Mazda dealerships have seen similar gains.

"Before I had cameras I was running around \$575 a copy," says Bagan. "Since the cameras we're at \$850 a copy. I went from a 34 percent warranty penetration to 58 percent. I've had about a 10 to 12 percent bump across the board on all my products due to the simple fact that everybody gets presented everything every time."

Although other factors may have influenced these increases, it's indisputable that being taped has motivated finance managers to be thorough, consistent and conscientious.

### **A Double-Edged Sword**

Out of the 22,000 dealers nationwide, at least 600 to 700 are using the SmartEye recording system, says IAS President Bob Corbin.

Most camera-shy dealers seem deterred by the fact that cameras can catch their people doing something wrong. Customers and attorneys can use dealers' footage as evidence against them if an F&I person has indeed erred.

This is why Ferman Motor Car Co. doesn't record transactions. Stephen Straske, vice president and corporate counsel for Ferman, is apprehensive about recording. "Unless dealers have been vetted by their lawyers and consultants in every aspect of compliance, they can't have the confidence that all their people are doing things perfectly."

Straske continues to evaluate the recording approach but believes training and developing a compliance culture are most important. If you can standardize forms and work processes and ensure proper disclosure, recording might not be necessary. The risk, however, is that F&I managers might keep making dangerous mistakes unless someone starts monitoring them.

"A dealer who isn't being proactive is eventually going to become a target," says Johnny Garlich, president of Heart Dealer Financial Services in St. Louis. Garlich recently moved some major dealers to SmartEye NET.

"The current breed of plaintiffs' attorneys are looking to use unfair trade practices as a lever to force the dealer to pay legal fees," says Garlich. "The result is that a small judgment rendered for the consumer can translate to a large legal bill for the plaintiff attorney that the dealer is obligated to pay."

Corbin says it's better for dealers to catch the errors on their own cameras than for "20/20," "60 Minutes" or "Dateline" to catch them.

"If you're illegal today, you need to get legal whether you record or not," says Corbin. "Recording is just a very inexpensive and effective way to spot-check F&I people."

Another objection Corbin hears from dealers is that managers might not sell as aggressively or be as thorough under the pressure. Their nervousness might affect the numbers. But in most instances, dealers' numbers have gone up as a result of recording.

Other dealers, particularly smaller ones, don't want to pay for

recording technology, says Jim Ganther, general counsel for Continental-National Services Corp. However, it might save dealers money in the long run.

"It's cheaper than your first lawsuit, even if you win," says Ganther. "You'll rack up tens of thousands of dollars in legal fees. This is money well spent in defense."

Ganther says the decision to record should be made on a dealership-by-dealership basis. The dealer should weigh the risk of getting something wrong on tape against the ability to train personnel and reduce the chance of litigation.

### **Tips for Taping**

Dealers considering cameras in their F&I offices should do the following as a rule of thumb:

- Have a clearly displayed sign explaining that the transaction is being recorded for the customer's protection and for training purposes. Direct customers' attention to the sign and the camera so they are fully aware of the policy.
- Get the customer's consent -- or refusal -- to be recorded, on tape. Even a customer's refusal may come in handy if that customer ever has a complaint or attempts to take you to court.
- Make sure the customer and F&I manager are both clearly in the camera's view and audible.
- Have a written policy of how long the recordings will be kept on file.

Also, find out the state's specific wiretapping laws. "When it comes to taping, there's no standard rule for what consent from the customer you'll need," says Straske. In Florida, where Ferman Motor Car Co. is located, you need the customer's consent when videotaping with sound.

The Reporters Committee for Freedom of the Press in Arlington, Va., offers summaries of wiretapping laws for all 50 states on its Web site ([www.rcfp.org/taping/states.html](http://www.rcfp.org/taping/states.html)).

### **Sidebar: Recording Technology**

Dealers who started taping several years ago used bulky cameras and VHS tapes. Today, vendors offer streamlined equipment, digital technology, more functionality and easier data storage.

SmartEye, from Texas-based Innovative Aftermarket Systems, includes a ceiling-mounted, full-color dome camera that is a few inches wide. Transactions are digitally recorded and can be burned onto CDs. With SmartEye NET, dealers can archive footage on the Internet. All transactions are backed up to a secure IAS server, and authorized users can access them from any Web browser.

SmartEye NET costs \$250 for hardware and \$2 per transaction for Internet archival. The software is free.

The SmartEye system lets dealers record only customer transactions. They are stored in a searchable database and can be

pulled up using time, customer name, or type of transaction. For example, a dealer can access all transactions where a customer declined a service contract, says Matt Nowicki, IAS director of information technology.

The Finance Profit Center in Kokomo, Ind., offers a system that can include audio and video recording with Web storage and retrieval. The pricing varies depending on what products the dealer selects with the system.

Camera Ready in New Orleans started installing cameras in dealerships about five years ago. The company just developed an automated digital system that it hasn't yet introduced.

The cost for basic equipment alone is approximately \$3,000, says Mike Howell, president of Camera Ready. The system records transactions by date, time and camera or office number.

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